2022

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2022

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2022 REGULAR SESSION

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 19B

Titles 85 to 91

(As Revised 2021)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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ISBN 978-0-327-09628-3 (Code set)
ISBN 978-1-66331-641-7 (Volume 19B)

Matthew Bender & Company, Inc.

9443 Springboro Pike, Miamisburg, OH 45342

www.lexisnexis.com

(Pub. 44510)

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2022 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2022 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 4th Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2022 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2022 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

SEC.

TITLE 89. Real and Personal Property

CHAPTER 7. Landlord and Tenant

89-7-34. Nonresidential evictions; default judgment to landlord under certain circumstances; judgments to be signed and executed on the same business day that they are granted.

CHAPTER 8. Residential Landlord and Tenant Act

89-8-31. Residential evictions; authorized in certain circumstances.
89-8-33. Residential evictions; required documents to file.
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89-8-37. Residential evictions; default judgment to landlord under certain circumstances; judgments to be signed and executed on the same business day that they are granted.
89-8-39. Residential evictions; order to vacate; setting of move-out date; warrant for removal; tenant's reasonable access to premises after the warrant of removal has been executed; disposal of abandoned property; warrant of removal not issued under certain circumstances; landlord's duty of good faith.
89-8-41. Residential evictions; continuances.
89-8-43. Residential evictions; appeals from final judgments.
89-8-45. Holdover tenant; penalty.

SCHEDULE OF NEW SECTIONS

Added in this Supplement

Sec.

TITLE 89. Real and Personal Property

CHAPTER 7. Landlord and Tenant

89-7-44. Nonresidential evictions; default judgment to landlord under certain circumstances; judgments to be signed and executed on the same business day that they are granted.

CHAPTER 8. Residential Landlord and Tenant Act

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89-8-41. Residential evictions; continuances.

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89-8-43. Holdover tenant; penalty.

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ARTICLE 1.

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§ 89-5-8. Affidavits relating to identification, marital status, heirship, etc. of party to instrument affecting real estate titles recordable; affidavit of scrivener's error recordable; admissibility.

(1) Any affidavit containing a statement relating to the identification, the

marital status, the heirship, the relation, the death or the time of death of any person who is a party to a document affecting the title to real property, or any affidavit relating to the identification of any corporation or other legal entity which is a party to a document affecting the title to real property, signed by the affiant and verified upon oath or affirmation before a notarial officer, shall be recordable in the land records in the office of the chancery clerk in the county where the real property is situated.

(2)(a) Notice of a typographical or other minor error in a document affecting the title to real property may be given by recording an affidavit containing a statement of scrivener's error. If an affidavit is conspicuously identified as an affidavit of scrivener's error, the chancery clerk shall index the affidavit in the general index under the names of the original parties to the document if they are identified in the affidavit, and in the sectional index as provided in the indexing instructions of the affidavit. Notice of the corrective information provided by the affiant is effective upon recordation. An affidavit under this paragraph (a) may be prepared only by an attorney licensed to practice law in this state.

(b) The affidavit of scrivener's error shall be executed and acknowledged by the affiant and verified upon oath or affirmation before a notarial officer, and shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated. The affidavit shall recite: (i) the name and Mississippi bar number of the affiant attorney, (ii) the instrument containing clerical error, and (iii) a statement that the affiant is in good standing with The Mississippi Bar, is licensed to practice law in the State of Mississippi, and that his or her license is active at the time of verification or affirmation. Any affidavit of scrivener's error recorded that is not executed by an attorney licensed to practice law in the State of Mississippi, and who prepared any document in the chain of title to the subject real property, regardless of the date of recording shall be void.

(c) The chancery clerk shall make a marginal notation on the document to which the affidavit refers.

(3) Where title to homestead property is in the titled spouse, the nontitled spouse, in lieu of joining the titled spouse in executing a conveyance, mortgage, deed of trust or other encumbrance upon a homestead, may file an affidavit of nonhomestead verified upon oath or affirmation that either: (a) the nontitled spouse, together with the titled spouse, freely and voluntarily abandoned the old homestead and secured and currently together occupy a new homestead residence; or (b) the nontitled spouse freely and voluntarily separated from the titled spouse with no intent to return to the titled spouse or to reside with the titled spouse, either temporarily or permanently, on the titled spouse's homestead, and the nontitled spouse currently maintains and occupies a separate residence.

(4) A person who knowingly makes or causes to be made a false statement in an affidavit is guilty of perjury and liable for the actual damages suffered or incurred by any person as a result or consequence of the making of or reliance upon the false affidavit. The court may award punitive damages, costs and attorney's fees.

(5) From and after July 1, 2021, an affidavit recorded under this section must include a description of the real property covered by the affidavit.

(6) Any affidavit so recorded, or a certified copy thereof, shall be admissible as evidence in any action involving the document to which it relates or the title to the real property affected by the document and shall be prima facie evidence of the facts stated therein and the marketability of the title to real property.

HISTORY: Laws, 2007, ch. 444, § 1; Laws, 2013, ch. 461, § 1, eff from and after passage (approved Mar. 25, 2013); Laws, 2020, ch. 382, § 33, eff from and after July 1, 2021; Laws, 2022, ch. 469, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (2), deleted "who prepared any document in the chain of title to the subject real property" at the end of (a), rewrote (b), which read: "The affidavit of scrivener's error shall be signed by the affiant and verified upon oath or affirmation before a notarial officer, and shall be recordable in the land records in the office of the chancery clerk in the county where the real property is situated," and deleted "If requested" at the beginning of (c).

CHAPTER 7.

LANDLORD AND TENANT

Sec.

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89-7-45. Repealed.
89-7-47. Record, appeals.

§ 89-7-27. Nonresidential evictions; authorized in certain circumstances.

A tenant or lessee at will or at sufferance, or for part of a year, or for one or more years, of premises or other lands not constituting a dwelling unit as defined in Section 89-8-7(b), and the assigns, undertenants, or legal representatives of such tenant or lessee, shall be removed from the premises by the

justice court judge, county court judge or circuit court judge where the premises, or some part thereof, are situated, in the following cases, to wit:

First. Where such tenant shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his possessory term, without the permission of the landlord.

Second. After any default in the payment of the rent pursuant to the agreement under which such premises are held, and three (3) days' notice, in writing, requiring the payment of such rent or the possession of the premises, shall have been served by the person entitled to the rent on the person who owes the rent. Notice of default by email or text message is proper if the tenant has agreed in writing to be notified by that means.

Third. If a written agreement between the landlord and tenant exists, any event calling for eviction in the rental agreement may trigger the eviction process under this section. Notice of default by email or text message is proper if the tenant has agreed in writing to be notified by that means.

HISTORY: Codes, 1857, ch. 41, art. 27; 1871, § 1646; 1880, § 1333; 1892, § 2547; 1906, § 2885; Hemingway's 1917, § 2383; 1930, § 2226; 1942, § 948; Laws, 2018, ch. 446, § 1, eff from and after July 1, 2018; Laws, 2022, ch. 501, § 13, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, in the introductory paragraph, substituted "premises or other lands not constituting a dwelling unit as defined in Section 89-8-7(b)" for "any houses, lands, or tenements" and "justice court judge, county court judge or circuit court judge" for "judge of the county court, any justice of the peace of the county, or by the mayor or police justice of any city, town, or village"; in the paragraph designated "First," inserted "possessory"; in the paragraph designated "Second," deleted "and when complete satisfaction of the rent and any late fees due cannot be obtained by distress of goods" following "premises are held," and added the last sentence; and in the paragraph designated "Third," inserted "rental" and substituted "tenant" for "party."

§ 89-7-29. Nonresidential evictions; required documents to file.

To commence a civil action under Section 89-7-27, the landlord shall file a sworn affidavit or complaint, based upon the terms of the rental agreement that:

(a) States the facts requiring the removal of the tenant;

(b) Identifies the address of, or otherwise describes, the premises and, if applicable, the amount of rent and any additional fees owed;

(c) Declares that the necessary notice has been given to terminate the tenancy; and

(d) Identifies any specific items of tenant property located at the premises as to which the landlord asserts a valid lien and has commenced, or is commencing, proceedings governed by Section 89-7-51 et seq., Mississippi Code of 1972.

HISTORY: Codes, 1857, ch. 41, art. 28; 1871, § 1648; 1880, § 1334; 1892, § 2548; 1906, § 2886; Hemingway's 1917, § 2384; 1930, § 2227; 1942, § 949; Laws, 2018,

ch. 446, § 2, eff from and after July 1, 2018; Laws, 2022, ch. 501, § 12, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, rewrote the section.

§ 89-7-31. Nonresidential evictions; issuance of summons; required notice to persons in or claiming possession of premises.

(1) Upon the filing of the sworn affidavit or complaint, a summons shall be issued for service upon the person in possession of the identified premises or claiming possession thereof. The summons shall command such person to immediately vacate the premises or to show cause before the judge, on a day to be named in the summons, why possession of the premises should not be delivered to the applicant.

(2) In addition to the information required by subsection (1) of this section and the applicable Mississippi Rules of Court, the summons shall state:

"You are being sued for eviction. At the eviction hearing, the judge will determine if the landlord is entitled to possession of your rental unit.

If the landlord is granted possession of the rental unit, then you will have at least seven (7) days from the date of the judgment to move out, unless a shorter or longer period of time for vacating the premises is ordered because of an emergency or other compelling circumstances.

If the landlord seeks possession based on nonpayment of rent, you do not have to move out if you pay all the sums owed to the landlord either before the eviction hearing or, afterwards, by the court-ordered move-out date.

If you move out by the date ordered by the court, leaving property behind, then the landlord may dispose of such abandoned property without further notice.

If you do not move out by the date and time ordered by the court, the landlord can have you removed by law enforcement.

If the landlord has asserted a lien against certain specified items and has commenced proceedings against the items, your right to remove the specified items of property will be addressed by the court.

You will have seventy-two (72) hours after your removal by law enforcement to take your other property not subject to a lien proceeding.

After seventy-two (72) hours, the landlord may remove any personal property remaining on the premises to the curb, an area designated for garbage or some other location agreed to by you and the landlord. You may still retrieve your personal property, but the landlord will have no obligation to preserve the personal property upon removal."

HISTORY: Codes, 1857, ch. 41, art. 29; 1871, § 1649; 1880, § 1335; 1892, § 2549; 1906, § 2887; Hemingway's 1917, § 2385; 1930, § 2228; 1942, § 950; Laws, 2015, ch. 395, § 1, eff from and after July 1, 2015; Laws, 2019, ch. 386, § 1, eff from and after passage (approved March 22, 2019); Laws, 2022, ch. 501, § 14, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, rewrote the section.

§ 89-7-33. Nonresidential evictions; service of summons.

Service of summons shall be pursuant to applicable Mississippi Rules of Court.

HISTORY: Codes, 1857, ch. 41, art. 30; 1871, § 1650; 1880, § 1336; 1892, § 2550; 1906, § 2888; Hemingway's 1917, § 2386; 1930, § 2229; 1942, § 951; Laws, 2022, ch. 501, § 15, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, rewrote the section, which read: "Such summons shall be served as a summons is served in other cases, if the tenant can be found; if not, then by putting up a copy in some conspicuous place on the premises where the tenant last or usually resided."

§ 89-7-34. Nonresidential evictions; default judgment to landlord under certain circumstances; judgments to be signed and executed on the same business day that they are granted.

(1) In eviction actions, the court shall grant a default judgment to the landlord where:

(a) The landlord complies with Section 89-7-29;

(b) Issuance and service of summons is proper;

(c) The tenant fails to appear; and

(d) The landlord is otherwise entitled to a judgment under law.

(2) In eviction actions, the court shall grant judgment to the landlord where:

(a) The landlord complies with Section 89-7-29;

(b) The judge finds that the tenant failed to present a valid defense or counterclaim; and

(c) The landlord is otherwise entitled to a judgment under law.

(3) In eviction actions, judgments granted by the court shall be signed and executed on the same business day that the judgment is granted.

HISTORY: Laws, 2022, ch. 501, § 16, eff from and after passage (approved April 21, 2022).

§ 89-7-35. Nonresidential evictions; order to vacate; setting of move-out date; warrant for removal; tenant's reasonable access to premises after the warrant of removal has been executed; disposal of abandoned property; warrant of removal not issued under certain circumstances; landlord's duty of good faith.

(1) If a judgment of possession is granted to the landlord, either after a hearing or by default judgment, then the judge shall order the tenant to vacate

the premises in seven (7) days from the date of the judgment, unless the court finds that a shorter or longer period of time is justified because of an emergency or other compelling circumstances.

(2) Prior to the court-ordered move-out date, the tenant shall have the same access to the premises as previously allowed under the terms of the rental agreement. Unless the judge has made some other finding regarding property at the premises, the tenant may remove its property during this time. If the tenant has vacated the premises by the court-ordered move-out date, then the landlord may dispose of any property, not addressed by the court, which the tenant leaves behind without further notice to the tenant.

(3) After the court-ordered move-out date, the landlord may request a warrant for removal. Upon such request and the payment of applicable fees, the judge shall, except as otherwise prohibited under subsection (5) of this section, immediately issue a warrant to the sheriff or any constable of the county in which the premises, or some part thereof, are situated, immediately commanding the sheriff or constable to remove all persons from the premises, and to put the landlord into full possession thereof.

(4) Unless the judge has made some other finding regarding property at the premises, the landlord shall allow the tenant reasonable access to the premises for seventy-two (72) hours after the warrant for removal has been executed to enable the tenant to remove the tenant's property, including any manufactured home. All property the tenant leaves on the premises seventy-two (72) hours after the execution of the warrant for removal shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(5) In cases in which the possession judgment is based solely on the tenant's nonpayment of rent, the judge shall not issue a warrant for removal, on or before the court-ordered move-out date, if the tenant has paid in full all unpaid rent and other sums owed pursuant to the judgment. A landlord has an obligation of good faith to accept full payment of all sums owed pursuant to the money judgment entered if so tendered on or before the court-ordered move-out date.

HISTORY: Codes, 1857, ch. 41, art. 31; 1871, § 1651; 1880, § 1337; 1892, § 2551; 1906, § 2889; Hemingway's 1917, § 2387; 1930, § 2230; 1942, § 952; Laws, 2015, ch. 395, § 2, eff from and after July 1, 2015; Laws, 2019, ch. 386, § 2, eff from and after passage (approved March 22, 2019); Laws, 2022, ch. 501, § 17, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, rewrote (1) and (2); and added (3) through (5).

§ 89-7-37. Nonresidential evictions; defense may be made.

The tenant in possession of the premises, or any person claiming possession thereof, may, at or before the time appointed in the summons for showing cause, file an affidavit with the court, denying the facts upon which the summons was issued; and the matters thus controverted may be tried.

HISTORY: Codes, 1857, ch. 41, art. 32; 1871, § 1652; 1880, § 1338; 1892, § 2552; 1906, § 2890; Hemingway's 1917, § 2388; 1930, § 2231; 1942, § 953; Laws, 2022, ch. 501, § 18, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, substituted "tenant" for "person" and "the court" for "the magistrate who issued the same"; deleted "by the magistrate" from the end; and made a minor stylistic change.

§ 89-7-39. Nonresidential evictions; continuances; subpoenas.

The court may, at the request of either party, adjourn a hearing from time to time. A single adjournment shall not exceed ten (10) days, except by consent of both the landlord and tenant. When an adjournment is granted, the court, may issue subpoenas and attachments to compel the attendance of witnesses. However, in hearings for eviction, no adjournment shall extend the entire hearing beyond forty-five (45) days from the date the eviction action was filed.

HISTORY: Codes, 1857, ch. 41, art. 35; 1871, § 1655; 1880, § 1339; 1892, § 2553; 1906, § 2891; Hemingway's 1917, § 2389; 1930, § 2232; 1942, § 954; Laws, 2018, ch. 446, § 3, eff from and after July 1, 2018; Laws, 2022, ch. 501, § 19, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, rewrote the former first sentence, which read: "The court may, at the request of either party, adjourn the hearing from time to time, a single adjournment not to exceed ten (10) days, except by consent, and may issue subpoenas and attachments to compel the attendance of witnesses" and divided it into the present first three sentences.

§ 89-7-41. Repealed.

Repealed by Laws, 2022, ch. 501, § 27, eff from and after passage (approved April 21, 2022).

§ 89-7-41. [Codes, 1857, ch. 41, art. 36; 1871, § 1656; 1880, § 1340; 1892, § 2554; 1906, § 2893; Hemingway's 1917, § 2390; 1930, § 2233; 1942, § 955; Laws, 2015, ch. 395, § 3, eff from and after July 1, 2015; Laws, 2019, ch. 386, § 3, eff from and after passage (approved March 22, 2019).]

Editor's Notes — Former § 89-7-41 related to the issuance of a warrant to put the landlord in possession of the premises and the disposition of tenant's abandoned personal property. For provisions relating to court order to vacate, warrant for removal, see §§ 89-7-31, 89-8-39. For provisions relating to disposition of tenant's abandoned personal property, including a manufactured home, see §§ 89-7-35, 89-8-39.

§ 89-7-43. Nonresidential evictions; assessment of costs against landlord when judgment of possession not granted.

If a judgment of possession is not granted to the landlord, the judge shall assess costs against the landlord and issue execution therefor.

HISTORY: Codes, 1857, ch. 41, art. 37; 1871, § 1657; 1880, § 1341; 1892, § 2555; 1906, § 2892; Hemingway's 1917, § 2391; 1930, § 2234; 1942, § 956; Laws, 2022, ch. 501, § 20, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, rewrote the section, which read: "If the decision be in favor of the tenant, he shall recover costs of the applicant, and the magistrate shall issue execution therefor."

§ 89-7-45. Repealed.

Repealed by Laws, 2022, ch. 501, § 27, eff from and after passage (approved April 21, 2022).

§ 89-7-45. [Codes, 1857, ch. 41, art. 38; 1871, § 1658; 1880, § 1342; 1892, § 2556; 1906, § 2894; Hemingway's 1917, § 2392; 1930, § 2235; 1942, § 957; Laws, 2018, ch. 446, § 4, eff from and after July 1, 2018; Laws, 2019, ch. 386, § 4, eff from and after passage (approved March 22, 2019).]

Editor's Notes — Former § 89-7-45 governed when a warrant of removal may issue in cases of nonpayment of rent. For present provisions relating to cases in which possession judgment is based solely on nonpayment of rent, see §§ 89-7-35, 89-8-39.

§ 89-7-47. Record, appeals.

The judge before whom proceedings shall be had against a tenant holding over, shall keep a full record of the proceedings, and shall carefully preserve all papers in the cause. Appeals from final judgements under this chapter shall be pursuant to applicable Mississippi Rules of Court.

HISTORY: Codes, 1857, ch. 41, art. 39; 1871, § 1659; 1880, § 1343; 1892, § 2557; 1906, § 2895; Hemingway's 1917, § 2393; 1930, § 2236; 1942, § 958; Laws, 2022, ch. 501, § 21, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, in the first sentence, substituted "judge" for "magistrate," and deleted "and the same costs shall be taxed and paid as are allowed for similar service in cases of unlawful entry and detainer, and the right of appeal shall exist as in such cases" from the end; added the second sentence; and made a minor stylistic change.

CHAPTER 8.

RESIDENTIAL LANDLORD AND TENANT ACT

Sec.

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Sec.

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89-8-43. Residential evictions; appeals from final judgments.
89-8-45. Holdover tenant; penalty.

§ 89-8-3. Application of chapter.

(1) This chapter shall apply to, regulate and determine rights, obligations and remedies under any rental agreement entered into after July 1, 1991, wherever made, for a dwelling unit located within this state. Any rights, obligations, or remedies at law or in equity not prohibited by this chapter remain available to residential landlords and tenants.

(2) The following arrangements are not governed by this chapter:

(a) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service;

(b) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(c) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(d) Transient occupancy in a hotel, motel or lodgings;

(e) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or

(f) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes or when the occupant is performing agricultural labor for the owner and the premises are rented for less than fair rental value.

HISTORY: Laws, 1991, ch. 478, § 2; Laws, 1993, ch. 312, § 1, eff from and after passage (approved March 12, 1993); Laws, 2022, ch. 501, § 22, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, in (1), deleted the former second sentence, which read: "The rights, obligations and remedies of this chapter shall be in addition to all other rights, obligations and remedies provided by law and shall not alter or abridge the rights, obligations and remedies available to residential landlords and tenants pursuant to Sections 89-7-1 through 89-7-125," and added the last sentence; and in (2), made a gender-neutral change in (b), and a minor stylistic change in (f).

§ 89-8-7. Definitions; agent of landlord.

(1) As used in this chapter, the following terms shall have the meaning ascribed herein unless the context requires otherwise:

(a) "Building and housing codes" means any law, ordinance, or governmental regulation concerning fitness for habitation, construction, maintenance, operation, occupancy or use of any premises or dwelling unit.

(b) "Court" means a justice court, a county court or a circuit court.

(c) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household.

(d) "Good faith" means honesty in fact in the conduct of the transaction concerned and observation of reasonable community standards of fair dealing.

(e) "Judge" means a justice court judge, a county court judge or a circuit court judge.

(f) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, or the agent representing such owner, lessor or sublessor.

(g) "Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity.

(h) "Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

(i) "Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances therein, and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(j) "Possession judgment" means a judgment granting the landlord exclusive possession of the premises pursuant to this chapter.

(k) "Rent" means all payments to be made to the landlord under the rental agreement, including any late fees that are required to be paid under the rental agreement by a defaulting tenant.

(*l*) "Rental agreement" means all written or oral agreements for a dwelling unit located within this state that are subject to this chapter.

(m) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

(n) "Qualified tenant management organizations" means any organization incorporated under the Mississippi Nonprofit Corporation Act, a majority of the directors of which are tenants of the housing project to be managed under a contract authorized by this section and which is able to conform to standards set by the United States Department of Housing and Urban

Development as capable of satisfactorily performing the operational and management functions delegated to it by the contract.

(2) For purposes of giving any notice required under this chapter, notice given to the agent of the landlord is equivalent to giving notice to the landlord. The landlord may contract with an agent to assume all the rights and duties of the landlord under this chapter; provided, however, that such a contract does not relieve the landlord of ultimate liability in regard to such rights and duties.

HISTORY: Laws, 1991, ch. 478, § 4, eff from and after July 1, 1991; Laws, 2018, ch. 446, § 6, eff from and after July 1, 2018; Laws, 2022, ch. 501, § 23, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, in (1), rewrote the introductory paragraph, added (b), redesignated former (b) and (c) as (c) and (d), added (e), redesignated former (d) through (g) as (f) through (i), added (j), redesignated former (h) as (k), rewrote former (i) and redesignated it (*l*), and redesignated former (j) and (k) as (m) and (n); and made minor punctuation and stylistic changes throughout.

§ 89-8-9. Obligation to act in good faith.

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter, including the landlord's termination of a tenancy or the nonrenewal of a rental agreement or the removal of a tenant from the premises, imposes an obligation of good faith in its performance or enforcement.

HISTORY: Laws, 1991, ch. 478, § 5, eff from and after July 1, 1991; Laws, 2022, ch. 501, § 24, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, substituted "or the nonrenewal of a rental agreement or the removal of a tenant from the premises" for "or nonrenewal of a lease."

§ 89-8-11. Rules and regulations of landlord concerning tenant's use and occupancy of premises.

(1) A landlord may, from time to time, adopt written rules or regulations, however described, concerning the tenant's use and occupancy of the premises. They are enforceable against the tenant only if:

(a) Their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abuse, or make a fair distribution of services and facilities provided for the tenants generally;

(b) They are reasonably related to the purpose for which they are adopted;

(c) They apply to all tenants in the premises in a fair manner;

(d) They are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform what must or must not be done to comply;

(e) They are not for the purpose of evading the obligations of the landlord.

(2) A rule or regulation adopted or amended after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption or amendment is given to the tenant and it does not work a substantial modification of the rental agreement.

(3) If the dwelling unit is an apartment in a horizontal property regime, the tenant shall comply with the bylaws of the association of the apartment owners; and if the dwelling unit is an apartment in a cooperative housing corporation, the tenant shall comply with the bylaws of the corporation.

(4) Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit.

HISTORY: Laws, 1991, ch. 478, § 6, eff from and after July 1, 1991; Laws, 2022, ch. 501, § 9, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, inserted "written" preceding "rules or regulations" in the introductory paragraph of (1).

§ 89-8-13. Right to terminate tenancy for breach; notice of breach; return of prepaid rent and security; disposition of tenant's abandoned personal property.

(1) If there is a material noncompliance by the tenant with the rental agreement or the obligations imposed by Section 89-8-25, the landlord may terminate the tenancy as set forth herein or resort to any other remedy at law or in equity not prohibited by this chapter.

(2) If there is a material noncompliance by the landlord with the rental agreement or the obligations imposed by Section 89-8-23, the tenant may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity not prohibited by this chapter.

(3) The nonbreaching party may deliver a notice to the party in breach in writing, or by email or text message if the breaching party has agreed in writing to be notified by email or text message, specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen (14) days after receipt of the notice if the breach is not remedied within a reasonable time not in excess of fourteen (14) days; and the rental agreement shall terminate and the tenant shall surrender possession as provided in the notice subject to the following:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise, and the breaching party adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate;

(b) In the absence of a showing of due care by the breaching party, if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the nonbreaching party may terminate the rental agreement upon at least fourteen (14) days' notice in writing, or by email or text message if the breaching party has agreed in writing to be notified by email or text message, specifying the breach and the date of termination of the rental agreement;

(c) A party may not terminate for a condition caused by that party's own deliberate or negligent act or omission or an act or omission by a family member or other person on the premises when done with the consent of the party.

(4) If the rental agreement is terminated, the landlord shall return all prepaid and unearned rent and security recoverable by the tenant under Section 89-8-21.

(5)(a) If the material noncompliance by the tenant is the nonpayment of rent pursuant to the rental agreement, the landlord may deliver a notice in writing or by email or text message if the breaching party has agreed in writing to be notified by email or text message, specifying the rental agreement will terminate if payment of such rent is not made within three (3) days.

(b) Any judge presiding over a hearing in which a landlord seeks to evict a tenant for the nonpayment of rent shall abide by the provisions of the rental agreement that was signed by the landlord and the defaulting tenant.

(6) The parties' obligations regarding a tenant's personal property, including any manufactured home, shall be governed by Section 89-8-39.

HISTORY: Laws, 1991, ch. 478, § 7; Laws, 1993, ch. 312, § 2; Laws, 2015, ch. 395, § 4, eff from and after July 1, 2015; Laws, 2018, ch. 446, § 7, eff from and after July 1, 2018; Laws, 2022, ch. 501, § 10, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, in (1), substituted "set forth herein" for "set out in subsection (3) of this section" and "in equity not prohibited" for "equity except as prohibited"; in (2), substituted "equity not prohibited" for "equity except as prohibited"; rewrote (3)(c), which read: "Neither party may terminate for a condition caused by his own deliberate or negligent act or omission or that of a member of his family or other person on the premises with his consent"; rewrote (5)(a), which provided that the landlord was not required to provide 14 days' notice to tenant but could seek removal pursuant to Chapter 7, Title 89; in (5)(b), deleted "justice court judge or other" preceding "judge," and substituted "evict" for "remove"; and rewrote (6), which read: "Disposition of personal property, including any manufactured home, of a tenant remaining on the landlord's premises after the tenant has been removed from the premises shall be governed by Section 89-7-35(2) or Section 89-7-41(2)."

§ 89-8-15. Repair of defects by tenant.

(1) If, within thirty (30) days after written notice to the landlord of a specific and material defect which constitutes a breach of the terms of the rental agreement or of the obligation of the landlord under Section 89-8-23, the landlord fails to repair such defect, the tenant:

(a) May repair the defect; and

(b) Except as otherwise provided in subsection (2) of this section, shall be entitled to reimbursement of the expenses of such repairs within forty-five (45) days after submission to the landlord of receipted bills for such work, provided that:

(i) The tenant has fulfilled the obligations required under Section 89-8-25;

(ii) The expenses incurred in making the repairs do not exceed an amount equal to one (1) month's rent;

(iii) The tenant has not exercised the remedy provided by this section in the six (6) months immediately preceding; and

(iv) The tenant is current in rental payments.

(2) A tenant shall not be entitled to be reimbursed for repairs made pursuant to this section in an amount greater than the usual and customary charge for such repairs.

(3) Before correcting a condition affecting facilities shared by more than one (1) dwelling unit, the tenant shall notify all other tenants sharing such facilities of the plans for the repairs and shall so arrange the work as to create the least practicable inconvenience to the other tenants.

(4) The cost of repairs made by a tenant pursuant to this section may be offset against future rent.

(5) No provision of this section shall be construed to grant a lien against the real property.

HISTORY: Laws, 1991, ch. 478, § 8, eff from and after July 1, 1991; Laws, 2022, ch. 501, § 25, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, in (1)(b)(i), substituted "fulfilled the obligations required under" for "fulfilled his affirmative obligations under"; in (3), substituted "facilities of the plans for the repairs and shall" for "facilities of his plans and shall"; and made minor stylistic changes throughout.

§ 89-8-17. Rights of landlord after expiration of rental agreement.

(1) A rental agreement that fixes a definite term expires on the date stated in the rental agreement.

(2) Notwithstanding the provisions of Section 89-8-13, the landlord may, at any time after the expiration of a rental agreement, provide notice to the tenant in writing, or by email or text message, if the tenant has agreed to be notified by email or text message, specifying that the tenant is holding over after expiration of the rental agreement and that the landlord will commence eviction proceedings no earlier than three (3) days after such notice is provided. The landlord may alsodemand an increase in rent after the expiration of the rental agreement if such actions by the landlord did not have the dominant purpose of retaliation against the tenant for his actions authorized under this chapter and the landlord received written notice of each condition which was the subject of such actions of the tenant.

HISTORY: Laws, 1991, ch. 478, § 9, eff from and after July 1, 1991; Laws, 2022, ch. 501, § 26, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, rewrote the section, which read: "Notwithstanding the provisions of Section 89-8-13, the landlord

may, at any time after the expiration of a rental agreement, recover possession of the dwelling unit, cause the tenant to quit the dwelling unit involuntarily, demand an increase in rent or decrease the services to which the tenant has been entitled in accordance with any other provisions of this chapter, if such actions by the landlord did not have the dominant purpose of retaliation against the tenant for his actions authorized under this chapter and the landlord received written notice of each condition which was the subject of such actions of the tenant."

§ 89-8-19. Length of term of tenancy; notice to terminate tenancy; exception to notice requirement.

(1) Unless the rental agreement fixes a definite term a tenancy shall be week to week in case of a tenant who pays weekly rent, and in all other cases month to month.

(2) The landlord or the tenant may terminate a week-to-week tenancy by written notice given to the other at least seven (7) days prior to the termination date.

(3) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days prior to the termination date.

(4) Notwithstanding the provisions of this section or any other provision of this chapter to the contrary, notice to terminate a tenancy shall not be required to be given when the landlord or tenant has committed a substantial violation of the rental agreement or this chapter that materially affects health or safety.

HISTORY: Laws, 1991, ch. 478, § 10, eff from and after July 1, 1991; Laws, 2022, ch. 501, § 11, eff from and after passage (approved April 21, 2022).

Amendment Notes — The 2022 amendment, effective April 21, 2022, in (4), substituted "health or safety" for "health and safety."

JUDICIAL DECISIONS

1. Procedure.

Circuit court did not err in granting appellee's motion for summary judgment. Appellant's claims that appellee's husband failed to comply with certain statutes regarding termination of a month-to-month tenancy were never brought before the circuit court and were procedurally barred from consideration on appeal. Hunt v. Allen, 291 So. 3d 1125, 2020 Miss. App. LEXIS 60 (Miss. Ct. App. 2020).

§ 89-8-31. Residential evictions; authorized in certain circumstances.

A landlord may commence proceedings to evict a tenant:

(a) For breach of the rental agreement or for violation of this chapter pursuant to Section 89-8-13; or

(b) For failing to vacate after the expiration of the rental agreement pursuant to Sections 89-8-17 and 89-8-19.

HISTORY: Laws, 2022, ch. 501, § 1, eff from and after passage (approved April 21, 2022).

§ 89-8-33. Residential evictions; required documents to file.

To commence an eviction under Section 89-8-31, the landlord shall file:

(a) A sworn affidavit or complaint, based upon the terms of the rental agreement, that:

(i) States the facts requiring the removal of the tenant;

(ii) Identifies the address of the dwelling unit and, if applicable, the amount of rent and any additional fees owed; and

(b)(i) A copy of the written notice of breach delivered to the tenant pursuant to Section 89-8-13; or

(ii) A copy of the written notice to terminate the tenancy delivered to the tenant pursuant to Sections 89-8-17 and 89-8-19.

HISTORY: Laws, 2022, ch. 501, § 2, eff from and after passage (approved April 21, 2022).

§ 89-8-35. Residential evictions; issuance of summons; required notice to persons in or claiming possession of premises; service of summons.

(1) Upon the filing of the sworn affidavit or complaint, a summons shall be issued for service upon the person in possession of the identified premises or claiming possession thereof. The summons shall command such person to immediately vacate the premises or to show cause before the judge, on a day to be named in the summons, why possession of the premises should not be delivered to the applicant.

(2) In addition to the information required by subsection (1) of this section and the applicable Mississippi Rules of Court, the summons shall state:

"You are being sued for eviction. At the eviction hearing, the judge will determine if the landlord is entitled to possession of your rental unit.

If the landlord is granted possession of the rental unit, then you will have at least seven (7) days from the date of the judgment to move out, unless a shorter or longer period of time for vacating the premises is ordered because of an emergency or other compelling circumstances.

If the landlord seeks possession based on nonpayment of rent, you do not have to move out if you pay all the sums owed to the landlord either before the eviction hearing or, afterwards, by the court-ordered move-out date.

If you move out by the date ordered by the court, leaving personal property behind, then the landlord may dispose of such abandoned property without further notice.

If you do not move out by the date and time ordered by the court, the landlord can have you removed by law enforcement, after which you will have seventy-two (72) hours to remove your belongings.

After seventy-two (72) hours, the landlord may remove any personal property remaining on the premises to the curb, an area designated for

garbage or some other location agreed to by you and the landlord. You may still retrieve your personal property, but the landlord will have no obligation to preserve the personal property upon removal."

(3) Service of summons shall be pursuant to applicable Mississippi Rules of Court.

HISTORY: Laws, 2022, ch. 501, § 3, eff from and after passage (approved April 21, 2022).

§ 89-8-37. Residential evictions; default judgment to landlord under certain circumstances; judgments to be signed and executed on the same business day that they are granted.

(1) In eviction actions, the court shall grant a default judgment to the landlord where:

(a) The landlord complies with Section 89-8-33;

(b) Issuance and service of summons is proper;

(c) The tenant fails to appear; and

(d) The landlord is otherwise entitled to a judgment under law.

(2) In eviction actions, the court shall grant judgment to the landlord where:

(a) The landlord complies with Section 89-8-33;

(b) The judge finds that the tenant failed to present a valid defense or counterclaim; and

(c) The landlord is otherwise entitled to a judgment under law.

(3) In eviction actions, judgments granted by the court shall be signed and executed on the same business day that the judgment is granted.

HISTORY: Laws, 2022, ch. 501, § 4, eff from and after passage (approved April 21, 2022).

§ 89-8-39. Residential evictions; order to vacate; setting of move-out date; warrant for removal; tenant's reasonable access to premises after the warrant of removal has been executed; disposal of abandoned property; warrant of removal not issued under certain circumstances; landlord's duty of good faith.

(1) If a judgment of possession is granted to the landlord, either after a hearing or by default judgment, then the judge shall order the tenant to vacate the premises in seven (7) days from the date of the judgment, unless the court finds that a shorter or longer period of time is justified because of an emergency or other compelling circumstances. Circumstances that justify setting the move-out date less than seven (7) days from the date of the judgment, include, but are not limited to:

(a) The tenant has committed a substantial violation of the rental agreement or of this chapter that materially affects health or safety; or

(b) The tenant poses an immediate and significant risk of damage to the premises or of harm or injury to persons on the premises.

Prior to the court-ordered move-out date, the tenant shall have the same access to the premises as previously allowed under the terms of the rental agreement. If the tenant moves out by the date ordered by the court, leaving personal property behind, then the landlord may dispose of such abandoned property without further notice.

(2) After the court-ordered move-out date, the landlord may request a warrant for removal. Upon such request and the payment of applicable fees, the judge shall, except as otherwise prohibited under subsection (4) of this section, immediately issue a warrant to the sheriff or any constable of the county in which the premises, or some part thereof, are situated, immediately commanding the sheriff or constable to remove all persons from the premises, and to put the landlord into full possession thereof.

(3) After the warrant for removal has been executed, the landlord shall allow the tenant reasonable access to the premises for seventy-two (72) hours to enable the tenant to remove the tenant's personal property, including any manufactured home. If the tenant moves out within seventy-two (72) hours of the execution of the warrant of removal, leaving personal property behind, then the landlord may dispose of such abandoned property without further notice. After said seventy-two (72) hours, the landlord may remove any property remaining on the premises to the curb, an area designated for garbage or some other location agreed to by the tenant and the landlord.

(4)(a) In cases in which the possession judgment is based solely on the tenant's nonpayment of rent, the judge shall not issue a warrant for removal if:

(i) By the court-ordered move-out date, the tenant has paid in full all unpaid rent and other sums awarded to landlord in the judgment; or

(ii) After such date, the landlord has accepted payment of such amounts.

(b) A landlord has an obligation of good faith to accept full payment of all sums owed pursuant to the money judgment entered if so tendered on or before the court-ordered move-out date.

HISTORY: Laws, 2022, ch. 501, § 5, eff from and after passage (approved April 21, 2022).

§ 89-8-41. Residential evictions; continuances.

(1) The court may, at the request of either party, adjourn a hearing under this chapter from time to time.

(2) A single adjournment shall not exceed ten (10) days, except by consent of both the landlord and tenant. When an adjournment is granted, the court may issue subpoenas and attachments to compel the attendance of witnesses.

(3) In hearings for the removal of the tenant from the premises under this chapter, no adjournment shall extend the entire hearing beyond thirty (30) days from the date the eviction action was filed.

HISTORY: Laws, 2022, ch. 501, § 6, eff from and after passage (approved April 21, 2022).

§ 89-8-43. Residential evictions; appeals from final judgments.

Appeals from final judgments under this chapter shall be pursuant to applicable Mississippi Rules of Court.

HISTORY: Laws, 2022, ch. 501, § 7, eff from and after passage (approved April 21, 2022).

§ 89-8-45. Holdover tenant; penalty.

When a rental agreement with a definite term expires and the tenant fails or refuses to vacate the premises after being notified by the landlord to do so, then the landlord may, if not contradicted by the rental agreement, charge the tenant double the rent for the time that the tenant continues in possession of the premises following the date to vacate the premises specified in the notification.

HISTORY: Laws, 2022, ch. 501, § 8, eff from and after passage (approved April 21, 2022).

CHAPTER 12.

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Sec.
89-12-39. Claim for abandoned property paid or delivered to treasurer; determination; interest.

§ 89-12-39. Claim for abandoned property paid or delivered to treasurer; determination; interest.

(1) Any person claiming an interest in any property delivered to the state under the provisions of this chapter may file a claim on the form prescribed by the Treasurer.

(2) The Treasurer shall consider any claim filed under the provisions of subsection (1) of this section, and may hold a hearing and receive evidence concerning it. If a hearing is held, the Treasurer shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the Treasurer and the reasons for the Treasurer's decision. The decision shall be a public record.

(3) If the validity of a claim shall be determined in favor of the claimant, the Treasurer shall collaborate with the Department of Human Services to determine if the claimant owes a child support arrearage. If the claimant owes an arrearage, the Treasurer shall transfer to the Department of Human Services any portion of the claim, including any interest as described in

subsection (4) of this section, necessary to satisfy, fully or partially, the person's child support arrearage.

(4) If the validity of a claim shall be determined in favor of the claimant and the claimant does not owe a child support arrearage or there is a remaining amount of the claim after satisfaction of the arrearage under subsection (3) of this section, the Treasurer shall pay over to the claimant only that amount which the Treasurer actually received, without deduction for costs of notices or for service charges, together with interest at the rate of one-twelfth of one percent (1/12 of 1%) per month from the time when it was received by the Treasurer to the time when it was paid by him or her to the claimant. However, if the property claimed was interest bearing to the owner on the date of surrender by the holder, then the Treasurer shall instead add interest at a rate not to exceed five-twelfths of one percent (5/12 of 1%) per month or the lesser current market rate. The interest on interest-bearing property shall begin to accumulate on the date that the property is delivered to the Treasurer and shall cease on the earlier of the expiration of fifteen (15) years following delivery or the date on which payment is made to the owner. No interest on the interest-bearing property shall be payable for any period prior to July 1, 1982. Any holder who pays to the owner property which has been delivered to the state and which, if claimed from the Treasurer, would be subject to the provisions of this section as interest-bearing property, shall add interest as provided in this section. The added interest shall be repaid to the holder by the Treasurer in the same manner as the principal.

HISTORY: Laws, 1982, ch. 497, § 20; Laws, 1993, ch. 460, § 3, eff from and after July 1, 1993; Laws, 2022, ch. 486, § 2, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (2) substituted "the Treasurer" for "he" and "him" and "the Treasurer's" for "his"; divided former (3) into present (3) and (4) by adding "collaborate with the Department of Human services to determine if the claimant owns a child support arrearage" and the last sentence in present (3), and adding "If the validity of a claim...under subsection (3) of this section, the Treasurer shall" at the beginning of (4); and in (4), made a gender neutral change.

TITLE 91.

TRUSTS AND ESTATES

Chapter 7. Executors and Administrators. 91-7-1

CHAPTER 1.

DESCENT AND DISTRIBUTION

§ 91-1-23. Exempt property not to be partitioned in certain cases.

JUDICIAL DECISIONS

7. "Partition."

Chancery court properly denied the complaint for partition by sale as to the residential property because the marital residence had been claimed as homestead property during the marriage and continued to be claimed as homestead property by the husband, who still resided at the residence. Therefore, the involuntary partition of such property by chancery decree was prohibited by statute, since it could only have been partitioned by written agreement of the parties. Land v. Land, 334 So. 3d 1245, 2022 Miss. App. LEXIS 86 (Miss. Ct. App. 2022).

CHAPTER 7.

EXECUTORS AND ADMINISTRATORS

General Provisions. 91-7-1

GENERAL PROVISIONS

Sec.
91-7-63. Grant of administration.

§ 91-7-7. Proof of due execution of will.

JUDICIAL DECISIONS

3. Proof of handwriting

Record reflected that the grandson proved the handwriting of the testator and one of the subscribing witnesses but failed to prove the handwriting of the second subscribing witness, when neither subscribing witness was still alive to testify. Because the grandson failed to prove

the handwriting of at least two subscribing witnesses, the chancellor did not err by dismissing the grandson's petition to probate the purported will. Christmas v. Christmas (In re Will of Beard), 334 So. 3d 1154, 2022 Miss. LEXIS 80 (Miss. 2022).

§ 91-7-23. Validity contested within two years.

JUDICIAL DECISIONS

4. Concealed fraud.

Although appellant claimed that the executor's actions constituted concealed fraud, because the will was admitted to probate in common form, and appellant was not a party, the only duties of the executor were to notify the parties named in the will and give 90 day notice to creditors, both of which were done; thus, the rule of concealed fraud did not apply. Peyton v. Longo (In re Estate of Davis), 315 So. 3d 1080, 2021 Miss. App. LEXIS 157 (Miss. Ct. App. 2021).

§ 91-7-63. Grant of administration.

(1) Letters of administration shall be granted by the chancery court of the county in which the intestate had, at the time of his death, a fixed place of residence. If the intestate did not have a fixed place of residence, then by the chancery court of the county where the intestate owned land. If the intestate did not have a fixed place of residence and did not own land, then by the chancery court of the county where the intestate died. The court shall grant letters of administration to the relative who may apply, preferring first the husband or wife and then such others as may be next entitled to distribution if not disqualified, selecting amongst those who may stand in equal right the person or persons best calculated to manage the estate; or the court may select a stranger, a trust company organized under the laws of this state, or of a national bank doing business in this state, if the kindred be incompetent. If such person does not apply for administration within thirty (30) days from the death of an intestate, the court may grant administration to a creditor or to any other suitable person.

(2) In addition to the rights and duties of the administrator contained in this chapter, he shall also have those rights, powers and remedies as set forth in Section 91-9-9.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (54); 1857, ch. 60, art. 61; 1871, §§ 1088, 1089; 1880, § 1993; 1892, § 1850; 1906, § 2024; Hemingway's 1917, § 1689; 1930, § 1629; 1942, § 525; Laws, 1928, ch. 83; Laws, 1994, ch. 589, § 4; Laws, 1999, ch. 374, § 2; Laws, 2002, ch. 612 , § 2; Laws, 2008, ch. 452, § 2, eff from and after passage (approved Apr. 8, 2008); Laws, 2022, ch. 420, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (1), divided the former first sentence into the present first three sentences by substituting "residence. If" for "residence; but if," and inserting "then by the chancery court of the county where the intestate owned land. If the intestate did not have a fixed place of residence and did not own land," and deleted "or that in which his personal property or some part of it may be" from the end of the present third sentence.

§ 91-7-93. Inventory of money and property owned by decedent at time of death.

JUDICIAL DECISIONS

2. Lack of diligence.

Trial court erred by finding that the judgment lien holder's claim against the estate was time-barred because the co-executrices had a statutory duty to determine the type and amount of any encumbrance that could exist with reference to any item but only provided their own affidavit, which contained zero material facts relevant to how they actually executed their statutory duty to make such a reasonably diligent effort, when they did it, or how. In the presence of two enrolled and renewed judgments against the decedent in the county of her residence, the self-serving and conclusory affidavit did not meet the burden of reasonable diligence in identifying known creditors. Unifund CCR Partners v. Estate of Jordan (In re Estate of Jordan), — So. 3d —, 2022 Miss. App. LEXIS 167 (Miss. Ct. App. May 17, 2022).

§ 91-7-145. Notice to creditors of estate.

JUDICIAL DECISIONS

3. Failure to give notice.

Trial court erred by finding that the judgment lien holder's claim against the estate was time-barred because the co-executrices had a statutory duty to determine the type and amount of any encumbrance that could exist with reference to any item but only provided their own affidavit, which contained zero material facts relevant to how they actually executed their statutory duty to make such a reasonably diligent effort, when they did it, or how. In the presence of two enrolled and renewed judgments against the decedent in the county of her residence, the self-serving and conclusory affidavit did not meet the burden of reasonable diligence in identifying known creditors. Unifund CCR Partners v. Estate of Jordan (In re Estate of Jordan), — So. 3d —, 2022 Miss. App. LEXIS 167 (Miss. Ct. App. May 17, 2022).

§ 91-7-281. Attorney's fees allowable.

JUDICIAL DECISIONS

3. Executor, administrator, or guardian acting as attorney.

Order requiring estate's co-executrices to personally pay the costs and attorney's fees of the estate was not warranted because there was no finding that the attorney's fees incurred by the estate were improper or the result of bad faith, and in addition, it was directly against the testator's express intent. Est. of Bakarich v. Bakarich, 337 So. 3d 1078, 2022 Miss. LEXIS 134 (Miss. 2022).

CHAPTER 8.

MISSISSIPPI UNIFORM TRUST CODE

ARTICLE 10.

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE.

§ 91-8-1004. Attorney's fees and costs.

JUDICIAL DECISIONS

1. Award reversed.

While a mistake had been made with the drafting of the trust instrument, the award of attorneys' fees was reversed as no findings were made that the attorneys' fees were reasonable or that justice and equity required that the fees be paid from the trust. Olin v. Richards (In re Estate of Blackburn), 299 So. 3d 781, 2020 Miss. LEXIS 337 (Miss. 2020)